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ABSTRACT

This document comprises a report on the status and needs of undocumented minor aliens detained by the Immigration and Naturalization Service (INS) and proposes a national policy regarding their care and treatment. Information was gathered from 26 site visits in the following states: (1) Arizona; (2) California; (3) Florida; (4) Nevada; (5) Texas; and (6) Washington, D.C. The following issues are discussed: (1) patterns of apprehension; (2) staging facilities; (3) regulations on advisement of rights, voluntary departure, and exclusion/deportation hearings; (4) circumstances of detention; (5) types, conditions, and services of facilities; (6) release policies; (7) legal issues and problems of applying for political asylum; and (8) roles of child welfare agencies. The following recommendations are suggested for inclusion in a national policy: (1) release from custody as soon as possible; (2) assign responsibility for release to local child welfare service providers; (3) locate parents and arrange for family reunification; (4) facilitate voluntary departure of minors who live away from the United States border; (5) develop alternatives to the use of secure detention facilities; (6) require facilities to meet the licensing provisions of state child welfare and/or youth service agencies; (7) ensure adequate legal counsel; (8) designate INS staff to coordinate policy development and implementation; (9) appoint a private-sector ombudsman to monitor the circumstances of detainees; and (10) collect statistical data on the age and sex of apprehended and detained minors, asylum requests, and disposition of cases. One table of statistical data and a chart illustrating the sequence of events in immigration proceedings are included. A list of site visits and INS procedures for handling minors are appended. (FMW)

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Minors in Immigration Proceedings: Problems of Child Welfare and Immigration Enforcement

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MINORS IN IMMIGRATION PROCEEDINGS:
Problems of Child Welfare and Immigration Enforcement

INTRODUCTION

Over the past several years, there has been increased public concern about the apprehension and detention of minors by the Immigration and Naturalization Service. These concerns have surfaced, in large part, because a growing number of the children are Central Americans who face particular problems related to returning home and/or reuniting with their families. As a result, detention of these minors is more common than is the case with the youth who emigrate from adjacent countries.

The Immigration and Naturalization Service (INS) has been accused of apprehending minors in irregular or inappropriate ways, of imposing conditions of detention detrimental to the well being of minors, of using children as lures to apprehend parents who entered illegally, and of frequent abuses of regulations. Public scrutiny of this issue has taken the form of litigation challenging policies and practices connected with apprehension and detention, policy debates concerning federal versus state and local responsibilities for protecting the rights of children, and investigations by the General Accounting Office (GAO) and Federal Office of Juvenile Justice and Delinquency Prevention on children in federal custody.

A solution to the dilemma of minors in immigration proceedings is particularly elusive because the issue lies at the nexus

of sometimes overlapping and sometimes contradictory institutional mandates and public concerns. As a child welfare issue, it can be seen in one way: U.S. law regarding child protection extends to all minors (regardless of legal status) within the national territory. Federal, state and county institutions are mandated to support children and to assume responsibility for their physical well being when parents or guardians cannot do so, or are not present. Seen as an immigration issue, there are other considerations: U.S. law mandates that immigration authorities are to protect the national borders, and grants considerable latitude to the Immigration and Naturalization Service in apprehending, detaining and deporting aliens who attempt to enter illegally. At the same time, U.S. law protects the rights of aliens to apply for and receive asylum if they have a well-founded fear of persecution, regardless of their legal status or manner of entry. As this report will demonstrate, current policies raise questions about child welfare and childrens' rights, immigration control, due process and refugee protection.

At the heart of the problem is the absence of consistent, coherent national policies regarding the care and treatment of undocumented minors who come under the jurisdiction of the Immigration and Naturalization Service. Practice varies considerably from region to region, and even among districts within the same region. And, whereas this flexibility has led to model practices in some districts, it has permitted abuses in

others.

This report recommends the development of national standards for the care and protection of undocumented minors in immigration proceedings. These national policies should recognize the continuing need for flexibility to address problems that arise at the local level and to take advantage of local resources, but they should provide guidelines that establish minimum standards for dealing with this issue. Moreover, the national policies should place primary emphasis on child welfare considerations in order to ensure that required practices are not contrary to the interests of the children. To the extent possible, the aim of the policies should be the release of children from INS's custody as soon as possible. Where some period of detention is needed, the children should be held in the least restrictive environment -- for example, foster care or licensed group homes.

The report further recommends better monitoring by both the public and private sectors of the treatment of undocumented minors who are apprehended by INS. INS itself should designate staff with special responsibility for the development, implementation and monitoring of policies related to minors. There is need within the private sector for an organization to serve as an ombudsman, monitoring the circumstances of minors in INS custody. Moreover, there should be more proactive steps taken to ensure that minors receive adequate legal counsel, particularly if there is a likelihood that the minor will apply for asylum. The U.N. High Commissioner for Refugees (UNHCR) should be informed by INS of the apprehension of minors who come

from countries from which adult asylum seekers emigrate in order to facilitate this process. Finally, the report recommends improvements in the collection of data on undocumented minors in INS proceedings in order to permit better monitoring.

Methodology

This report is based on three sources of information. First, the research staff conducted a review of available literature on the care and treatment of undocumented minors in the United States and other countries. This review included examination of documents prepared for several court cases dealing with this issue, as well as literature pertaining to child welfare practices, juvenile justice issues, and evaluations of current practice.

The second phase of the project included field visits to several locations throughout the country in which undocumented minors were apprehended and/or detained, as well as interviews with key government officials in Washington, D.C. During the field visits, we interviewed INS officials, attorneys handling the cases of undocumented minors, staff of detention facilities, staff of public and private child welfare agencies, and the minors themselves. The sites used in this study included ones in Florida, Texas, California, Arizona, Nevada and Washington, D.C.

The third source of information was the Advisory Panel to this project. Convened by the International Social Services/American Branch, the Advisory Panel met three times to discuss study methodology, key issues, preliminary and final

research findings, and recommendations. While the ideas included in this report are the authors, the advice we received during these meetings was invaluable to us.

Scope of the Problem

This paper examines the problems associated with minors of all nationalities who come into INS custody. It reports on the circumstances of youth who enter the United States and are apprehended while in the company of their parents, as well as those who are unaccompanied at the time of their apprehension (some of whom are joining parents already here) or are traveling with relatives or friends. Because most of the reported problems occur in connection with apprehensions and detentions, and the majority of these take place at or near the border, we will devote most space to these issues. Other vulnerable alien minors whose problems are not directly related to their treatment by the INS are largely outside the scope of this study, e.g. the large population of alien minors living in major cities in the United States without supervision or adequate care; the alien children whose educational needs are not met by the schools in many cities; and the large portion of young "runaways" returned to their places of origin who, in fact, are abandoned children. For our purposes, the term "minor" will be used to refer to all individuals under 18 years of age.

Determining the exact scope of the problems related to minors in immigration proceedings is difficult. INS records of apprehensions and detention are kept by nationality, but the

figures are not broken down by age. Only in the case of apprehended Mexicans are there separate notations for adult males and for women and children. The INS does not publish separate figures on minors apprehended or detained; nor has it kept records of the length of time aliens in any category may have spent in detention. One may ascertain how many minors have been held in custody for what length of time only by looking at the case histories of the specific persons listed at a detention center at a given moment. A 1983 General Accounting Office report on Improved Federal Efforts Needed to Change Juvenile Detention Practices noted:

> None of the Federal Agencies, except the Marshalls Service, could completely account for the juveniles they had taken into custody... Current INS statistics combine arrest and detention data for illegal alien juveniles and female adults, making it impossible to determine how many juveniles were detained.
>
> Report to the Attorney General and the Secretary of the Interior, March 22, 1983. p. 38.

All INS districts regularly report on the population of detained aliens in each of the facilities, classifying them as Mexican or OTM, and noting the number of females, children and adult men. The Districts also report separately on cases of detention for over 30 days, and over 120 days, describing the reasons for long-term detention. The cases, however, are not separated by nationality. The Central Office of Detention and Deportation does not reduce or consolidate the information, nor is it kept over time. Therefore, existing figures are insufficient to calculate the population of minors by age, nationality,

length of time in detention and place of detention. The fact that the INS has not kept its statistical information over time means that it is extremely difficult to compare present and past figures or to trace numerical trends. At best, one can capture a "picture" of the juvenile population in detention at a given moment. For example, the INS provided the following information about minors in detention as of April 11, 1985: On that day, the INS counted 181 minors being detained, but this figure omits those in Miami and some at the staging center near San Diego.

The number of minors detained on any given day appears fairly small, as most are deported or released within one to two weeks (or voluntarily depart almost immediately after apprehension). The Office of Detention and Deportation currently estimates that at any given moment there are approximately 150 to 200 minors in detention facilities operated under INS auspices--including the holding centers or staging areas into which aliens are first placed upon apprehension. The largest numbers held are in California, even discounting those in the San Ysidro staging area, most of whom were probably Mexican nationals who would soon return to their homes. During the 1970s, the officials believe, one would have found from 100 to 120 minors in detention at any one time, and a higher proportion of this number would have been Mexican nationals in holding centers, soon to voluntarily depart.

Although the number of minors in detention on any given day appears to be small, the number who enter INS custody during the course of a year is substantial. It is a "rolling" population, continually renewed by new apprehensions and depleted by volun-

tary departures and release on bond. Over the course of a year, according to the informal estimates by the Office of Detention and Deportation, the INS holds an average of 10,000 minors. Although most remain for periods of less than a week, some minors have been held in detention for over a year.

As noted above, many of the detained minors are from Central America. It has only been since 1980 that substantial numbers of Central Americans have entered the United States. The rise in entries has been reflected in increased numbers of apprehensions. (The INS estimates that it apprehends one out of every two or three individuals who enter illegally.) In FY/1978, 8,968 Salvadorans and 4,089 Guatemalans were apprehended by the INS; that same year nearly one million Mexicans were apprehended, the vast majority at the Mexican border. In FY/ 1985, 16,244 Salvadorans and 5,971 Guatemalans were apprehended.

This population (known as other than Mexicans or "OTMs" by INS) comes primarily from El Salvador, as well as from Guatemala and Nicaragua. Although they are a minority of all aliens apprehended by INS, they are a growing minority and, given persistant violence and economic collapse in Central America, it is unlikely that their numbers will diminish.

Table I below provides numbers of various Central American groups (of all ages) in detention from October - March 1985.

TABLE I

Largest National Groups in Detention in FY 1985:

Salvadorans:	8,955
Guatemalans:	3,941
Colombians:	2,478
Nicaraguans:	1,537
Hondurans:	1,346
Cubans:	1,156*
Dominican Republicans:	1,008

*includes those in federal custody
Source: INS figures covering service and non-service facilities October - March, 1985

Central Americans present a range of new and particularly difficult humanitarian problems for the INS, which differ substantially from those generated by the more numerous illegal aliens from Mexico. Some of these problems include the following:

- Unlike their Mexican counterparts, who generally request voluntary departure, more and more Central Americans request political asylum. In 1979, for example, out of 11,414 Salvadorans apprehended, 2,906 departed voluntarily while in 1984 out of 18,936 apprehensions only 1,250 voluntarily departed. Political asylum is a lengthier and more complex procedure for both the INS and the alien than is voluntary departure, usually involving a period of detention.

- Even when Central Americans request voluntary departure, the logistics of transporting them back to their homelands can be difficult and time-consuming, involving long waits in various INS facilities.

- Central American asylum seekers tend to be detained the longest of all illegal immigrants, as they wait out the process of hearings and appeals. This presents a particular problem for minors, who might be detained alone or not allowed certain services, such as education.

- Unlike many Mexicans, the Central Americans tend to enter the U.S as family units, or with the intention of reuniting with families already in the United States This creates a problem in terms of housing in detention, as well as in effecting family reunification. There is a particular problem for unaccompanied minors who might have parents illegally in the United States who are loath to come forward to the INS to gain custody of their children.

* * * * *

In this report and the recommendations that follow we will seek solutions that uphold humanitarian principles without undermining legitimate national interests, taking into account both the special needs of children and the need for control over il-

legal entrants. The report is based on a series of interviews and site visits across the country. Appendix One lists the interviews conducted and sites visited during the course of the project. The report also contains information on sites which we may not have visited, but about which we were extensively briefed.

We will trace the issues and procedures involved at each stage of the process in the following chapters:

Chapter One, Entering INS Custody, discusses patterns of apprehension, the staging facilities in which minors are held after they enter INS custody, and regulations regarding advisement of rights, voluntary departure and exclusion/deportation hearings.

Chapter Two, Detention and Release from Detention, covers the circumstances of detention; types of facilities; conditions in facilities; services provided; and release policies.

Chapter Three, Political Asylum and Legal Representation, explains the legal issues and special problems experienced by minors who apply for political asylum.

Chapter Four, Child Welfare Mandates, describes the current roles of child welfare agencies involved in issues related to undocumented minors.

Chapter Five, Towards a New Policy Framework for Addressing Minors in INS Custody, forwards our concluding observations, policy recommendations and follow-up steps for additional action and research. It includes recommendations on the relationships between child welfare and immigration mandates; the need for

independent oversight of INS policies and practices; the issue of detention; monitoring requirements; the representation of minors; and data that should be collected on minors in immigration proceedings.

CHAPTER ONE: ENTERING INS CUSTODY

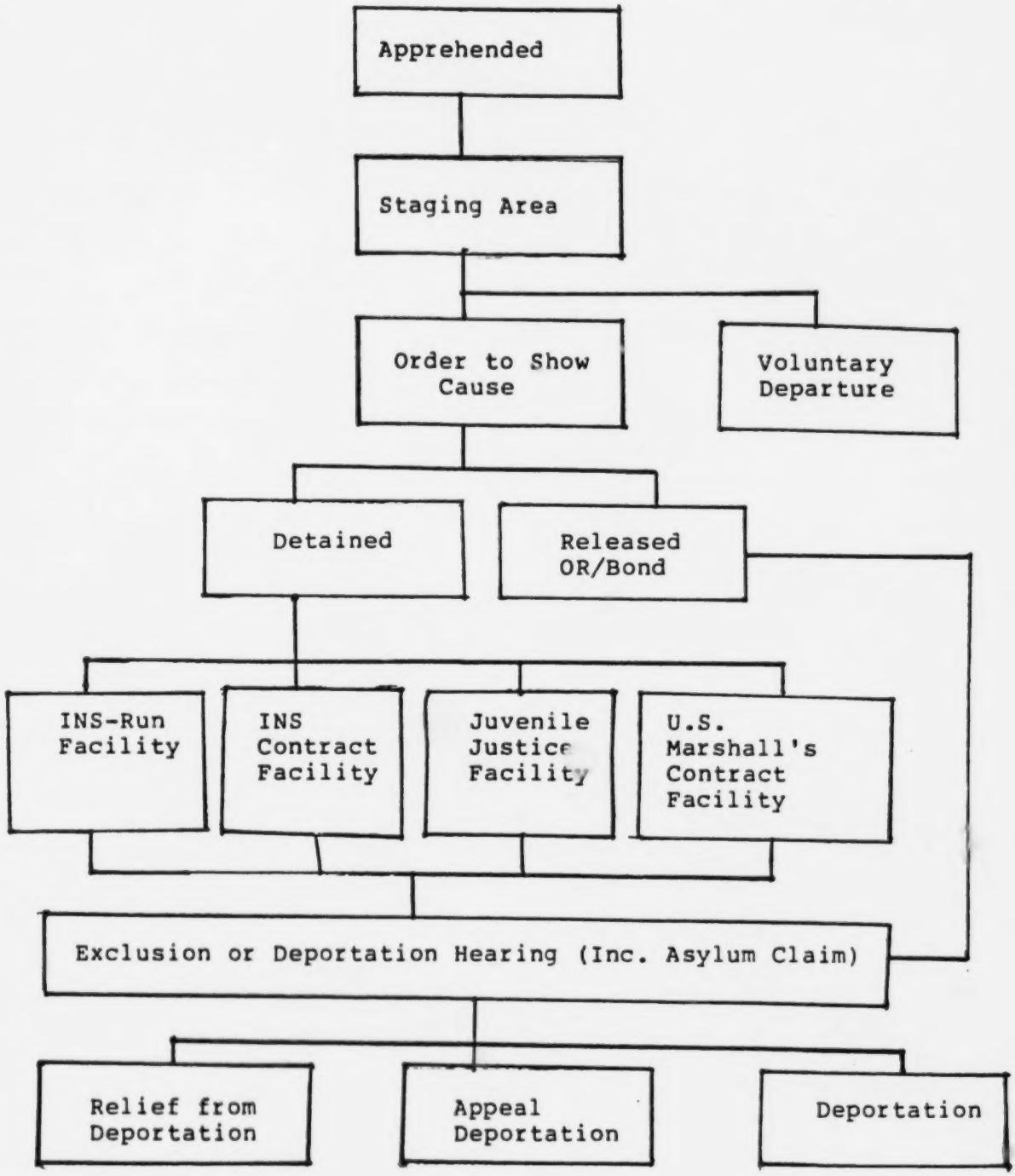
Most undocumented minors come to INS attention when they are brought into the Service's custody upon apprehension. As Figure I indicates, apprehension is the beginning of a process that can take the minor in several different directions. This chapter follows the youth through the various stages from apprehension to either voluntary departure or the setting of a time for a deportation hearing.

Patterns of Apprehension

Most aliens, including minors, are apprehended while attempting to enter the United States or within a short time after entry. The majority of apprehensions are made after the aliens have successfully crossed the border, at check points patrolled by the U.S. Border Patrol. The Border Patrol monitors all roads leading away from the border crossings, stopping vehicles deemed suspicious.

To cross the border it is generally necessary to pay the services of a guide, and in most cases the guides are professional human smugglers called "coyotes." It is not at all unusual for "coyotes" to exploit or otherwise abuse the aliens in their charge, and/or to fail to bring them to the promised destinations. If apprehended, these "coyotes" are subject to criminal charges (as are any other individuals involved in the transport of illegal aliens, whether they do so for profit as the "coyotes" do, or for humanitarian reasons as persons involved in the Sanctuary movement have done). It is common practice for the U.S.

Minors in Immigration Proceedings: Sequence of Events



Marshalls, under whose jurisdiction these persons fall, to detain the illegal entrants along with the smugglers who brought them. These "material witnesses" often include minors.

Some of the minors apprehended by INS have traveled alone or with their parents by air and are detected inland upon arrival because they have false documents or none at all. Still others attempt to enter by boat. Persons, such as these, who are detected still in the process of "entering" or physically crossing a border are placed in "exclusion" rather than deportation hearings. All individuals, regardless of age, who are in exclusion hearings are detained as a matter of course. INS officials may release them (formally they "parole" them into the country) for "humanitarian" reasons. The fact that a person is of minor age may constitute the humanitarian grounds for release. The usual bonding procedures do not pertain, and release is left entirely to the discretion of the regional INS District Director. The majority of minors held in Florida fall into this category.

The minors among the Haitian "boat people" (and those seen occasionally among the Cubans) constitute a special case. Despite the fact that fewer Haitian boats have been able to reach Florida in recent years because of the U.S. interdiction policy, there are still Haitians arriving in Florida. When apprehended, minors are generally turned over to the Community Relations Service because of its special program for the care of Cuban and Haitian minors still in effect since the 1980 Mariel boatlift. This will be further elaborated in the discussion of detention in

Florida.

There is consensus that if aliens manage to pass the Border Patrol check points on the roads leading from the border, the majority of them will be absorbed into the local population in the cities to which they migrate. Reportedly, minors are stopped less often than adults by immigration authorities. The latter are usually apprehended when the INS searches workplaces where undocumented aliens are known to be employed. The INS has investigated school populations at times, but it is not a common practice. Still, undocumented minors are apprehended in most large cities, and detained, generally when they come to the attention of police or children's protective services.

Accompanied and Unaccompanied Minors

The experiences of minors vary substantially depending upon the circumstances in which they are apprehended -- that is, where and with whom. The following sections will discuss the patterns of apprehension, as well as the later experiences, for minors falling into various categories.

Unaccompanied minors arriving at a border or at an international airport.

These are minors who are not accompanied by any responsible adult and who do not have parents in the United States. Usually minors in this category are adolescents with some experience of living on their own. However, it is not uncommon for quite young children to travel with older siblings or with non-related adults who may or may not be well known to them. Sometimes minors arrive with children of their own.

As discussed below, new restrictions require that the INS or Border Patrol place unaccompanied minors into deportation proceedings, advise them about their rights, and contact a person who will assist them and represent their interest in proceedings.

Minors unaccompanied at arrival who, nonetheless, have parents or close relatives residing in the United States

If these minors have parents legally in the country, the INS will usually release them to their parents, and often allow them to go without bond. However, the release patterns vary considerably from this norm and from each other, depending on whether parents are legally or illegally in the country, and on whether or not parents or other appropriate relatives are able to post the required bond. Sometimes parents are not in the United States because they have sent the children ahead while they remain. As this work will elaborate, minors in these situations are particularly vulnerable to abuse, and subject to long-term detention.

Minors who are apprehended at or near a border or at an international airport, accompanied by one or both parents or a guardian.

These minors while not unaccompanied, may be detained separately from their parents. Although INS policy is to keep families together if possible, families very frequently are separated--particularly if there are children involved. The practice of separating males from females and separating minors from adults, desirable for many obvious reasons, may also impede family reunification. Very few detention centers have family units. Minors who arrive with other family members who are also

detained are "accompanied" only in the technical sense. Parents cannot take responsibility for their children's well being if they, like their offspring, are in detention.

Unaccompanied minors apprehended some time after entry.

This category is relatively small in practice, because the INS rarely pursues minors who are already established in their communities. Nevertheless, many alien children in the United States are living as "runaways." Some, but by no means the majority, come to INS attention. When the Border Patrol apprehends young minors in the interior, the INS looks for an authorized party to represent the minors' interests. INS officials may work with state child welfare and/or private agencies to locate the minors' families.

Minors who are apprehended in the interior, whose families are illegally in the country.

Here again, if the parent does not come forward--either because he or she is illegally in the country or cannot raise sufficient bail--the children are likely to remain a considerable time in detention.

Staging Facilities

Upon apprehension, aliens, including minors, are placed in holding centers or staging facilities at the border. There is only one full-scale border staging area, located in San Ysidro, on the California-Mexican border near San Diego. Until 1986, this staging area consisted of large barracks-like structures, one of which held adolescent males. The women, young children of both sexes and adolescent girls were kept under guard in motels

and had food brought to them if they had to stay overnight. There were complaints about conditions in these motels and about the general crowding in the staging center's barracks for adult males as well. To improve the situation, the Border Patrol in 1985 constructed a larger facility to house 265 people and furnish meal service.

The new staging area is still inadequate for its intended purpose, which is to assure that apprehended aliens can be kept in custody until deportation is effected. This is the case for several reasons: As noted above, apprehensions at this border reach 2,000 a day, approximately 90% of whom are Mexican. A minority of Mexicans and most OTMS will not accept voluntary departure. This means that they must be held in the staging area until INS is able to find a place for their longer-term detention. Such places are at a premium, due to a shortage of availability and a reduced turn-over in facilities because of stringent release policies. In San Diego, in fact, the only facility that houses minors is a small facility operated by Catholic Charities under the jurisdiction of the U.S. Marshalls Service, with space for about 35 minors, women, and young children.

The consequence of these factors is a perpetual bottleneck at the staging area. Although intended for short-term detention--overnight or at most detention for a few days--the staging area facility commonly holds people for over a week. The present policy is to release women and young children of both sexes on their own recognizance if no alternative detention site can be

found within seven days. For the INS, this means that deportation will be much delayed, and very likely will never occur at all.

Similar situations exist elsewhere along the border, and at various entry points. There are a variety of holding facilities which might consist of a portion of the Border Patrol office, or a local jail. At the major detention center at Krome (Florida), a special barracks formerly used for health purposes has been reserved for minors.

Housing aliens immediately after apprehension is complicated by the requirement that women and young children are to be separated from the adult men, and minors are not to be placed with unrelated adults. Virtually all border patrol officers confront similar problems and delays in attempting to move apprehended aliens, particularly minors, to places where they can be detained on a long-term basis.

Advisement of Rights

Instructions regarding the treatment of minors were not formalized and disseminated to INS field offices until May and June 1981. They remained in effect until September 30, 1985 when they were modified in some respects by the decision of the U.S. District Court in California, in the Perez-Funez case, discussed below. The original instructions, appearing in what is known as the Bertness Memo (for the then Acting Associate Commissioner), distinguished between minors in the 14-16 year old category and those under the age of 14. The specifications of the memo are

included in Appendix Two. In general, the regulations provided for different procedures for minors depending upon their age; minors under 14 were automatically placed in proceedings and a consulate was contacted, while older minors were permitted to choose voluntary departure on their own behalf.

These procedures for handling apprehended minors were modified at the end of 1985 due to the September 30 decision of the U.S. District Court in the Perez-Funez class action case. At this writing, the INS and lawyers for the case are developing implementing mechanisms for the new procedures. The class action case represented unaccompanied minors, defined as persons under 18 years old, who at the time of apprehension and detention were not accompanied by a natural or lawful parent. The plaintiffs in the case alleged that the INS used coercive methods in its voluntary departure procedures, thereby depriving the minors of their rights to hearings, including political asylum. INS was also accused of inappropriately referring minors who had fled their countries because of political oppression to the consular officials of their home countries. As noted above, prior to the Perez-Funez decision, only children under 14 years of age were automatically placed in hearings, while older minors could choose voluntary departure. Plaintiffs argued that minors of all ages making this choice needed the assistance of another party or different mechanisms to represent their interests.

In early 1984, after the first stage of litigation on this case, the INS was enjoined to advise minors about legal counsel in the regions where they were apprehended. However, more often

than not, the INS lists of legal services agencies were out-of-date and inaccurate, or contained only agencies that were too far away to be of service. The Court emphasized the need to update and correct the legal services lists.

In some instances, it was also alleged, minors were not given access to telephones before they signed their voluntary departure forms. On this issue the Court ruling was firm. Henceforth all minors other than those from Mexico and Canada are to be assured access to telephones in order to communicate with relatives, friends or legal services organizations; the INS officials "shall ensure communication prior to presentation of the voluntary departure form." Minors from Mexico and Canada, in the Court's opinion, are more likely to understand their rights, and the deprivations caused by a voluntary departure are less. Therefore, the INS is to inform these minors of their rights to make telephone calls, but is not obliged to ensure that communication takes place.

In practice, unaccompanied Mexican minors apprehended at the border are interviewed by the Mexican Consul before they voluntarily depart. Consuls all along the border work with the INS in determining whether an apprehended minor is in fact Mexican. If so, consuls take charge of taking them across the border and releasing them to Sistema de Desarrollo Integral de la Familia, most commonly referred to as DIF, which is the nationwide voluntary social service agency in charge of child and family matters. DIF tracks down and contacts the minors'

families. Minors for whom no family is found are kept in a facility.

The Mexican Consul is available throughout the work week at the San Isidro crossing point, Laredo (among the sites we visited) and other major points of entry. Consuls make regular visits to the smaller crossing points as well. The border sites we visited report an effective working relationship between the INS and the consulate. By contrast, in interior U.S. sites, we heard complaints that the consulate delayed making arrangements for return of minors to the interior of Mexico.

In effect, where the arrangement is working, the Consul is assigned the responsibility to serve as temporary guardian for the minor. Usually, this arrangement is matter-of-fact and speedy. It only breaks down when minors are apprehended when the consul is unavailable. In those circumstances, it can sometimes result in days instead of hours of detention, even for minors who wish to take voluntary departure. For example, when a young Mexican is detained after working hours on a Friday, he or she must wait in a holding center at least until Monday morning in order to speak to a consul.

When OTM minors unaccompanied by parents or guardians are apprehended, the INS may contact the relevant consuls before executing a voluntary departure. Since U.S. authorities have no formal arrangements with governments other than that of Mexico, whereby the consuls assume guardianship functions automatically, the process of obtaining verification of nationality may take a few days. In its September 1985 decision in the Perez-Funez

case, the the U.S. District Court criticized the INS for involving consulate authorities from countries such as El Salvador and Guatemala as the minors' representatives. The Court agreed with the plaintiffs that consuls from these countries might have adverse, politically-based attitudes toward the minors.

Voluntary Departure or Deportation Hearings

The vast majority of apprehended Mexican minors accept voluntary departure. Having done so, they waive their right to deportation hearings and return across the border at their own expense. Often, they are able to return within a short period. Both the apprehended aliens from Mexico and the U.S. immigration authorities have found the voluntary departure option convenient: the latter wish to avoid the time and expense of detaining the aliens and conducting formal deportation hearings; the former wish to avoid being held in detention pending the hearings, as well as risking a negative decision and eventual deportation that precludes subsequent legal entries.

Problems remain for the Mexican minors who are really runaways, and have no families to care for them at home. Their return to Mexico can be complicated, and is an issue that U.S. and Mexican child welfare authorities are attempting to resolve. Officials in Texas and in Juarez, Mexico, for example, are currently negotiating procedures for dealing with these minors. And, DIF, as noted above, attempts to locate family members.

The majority of the OTMs do not accept voluntary departure. They are served with orders to show cause (OSC) and placed in

detention pending a deportation hearing. Given the Perez-Funez decision, INS gives these minors the means by which they can contact a responsible adult to advise them. They remain in detention until their hearings are scheduled, unless they post bond or are released on their own recognizance (OR). At their hearings, they may ask for political asylum. In this case, the deportation hearing is suspended until the INS receives an advisory opinion regarding the substance of the case from the State Department. It is not uncommon for an alien to remain in detention during the course of these hearings and appeals, a process which may take a year or more.

CHAPTER TWO: DETENTION AND RELEASE FROM DETENTION

Few issues regarding minors in immigration proceedings elicit as much concern as those pertaining to detention of these individuals. While all apprehended minors are technically detained by the INS until they can be released or returned to their countries of origin, the period of detention may vary from a few hours to many months. Of particular concern is the long-term incarceration of minors while their cases are being adjudicated or attempts are made to reunify them with family members.

The detention of minors, particularly using secure detention facilities-- as discussed in the next sections -- raises a range of issues. Perhaps most important, it raises a basic question: is incarceration based on a juvenile justice model an appropriate response to the illegal entry of youth?

Apprehended minors are not guilty of "crimes" in the same sense as juvenile criminal offenders. Nor, generally, do they represent a threat to society. As INS officials readily acknowledged, minors who were sent ahead by their families or are joining parents already here, in effect, are suffering the consequences of decisions made by others. At most, their guilt lies in their illegal **presence** in this country. Yet, they may be incarcerated in similiar conditions to, or in the same facilities as, these offenders.

The sections that follow describe current practices with regard to both detention and release from detention.

Why Detention?: An Immigration Perspective

A large number of minors spend at least some time in an INS detention facility and some remain there for months or even years. In explaining why the Service detains young people and imposes restrictive conditions on their release, including fairly high bonds, officials cited reasons related to both immigration enforcement and child protection. Some of the reasons pertained to the handling of individual cases while others were geared towards broader goals of immigration control.

First, minors are held for the same reasons as adults, to have them, and their families, readily available for deportation. If the minors and their families are in INS facilities, it is obviously easier to enforce deportation orders than if they are in the community. Moreover, people in detention are given priority in hearings and, therefore, may more quickly be deported. On the other hand, those released not only wait longer for their hearings, but frequently move from the district where they are detained and request venue changes, thereby creating administrtive problems. For these reasons, it is usual to place fairly high bonds on families, although these may be substantially reduced with the intervention of legal assistance. In practice, minors are generally given lower bonds than their parents, but the cost of releasing the family may be so high that they all remain in custody.

Detention assures that the minors will appear at their deportation hearings. Individuals released from INS custody may

not appear at subsequent deportation hearings. It is virtually impossible to know how serious this problem is. While the lawyers who defend the aliens usually claim that nearly all their clents do appear, immigration judges contend that "no-shows" are frequent. Some officials state that they believe that children released to parents illegally in the country are likely to abscond and not appear for their hearings.

More related to child welfare concerns, detention is used to protect minors. Although INS officials may be willing to release minors on bond and often with very modest bonds, in the Western region, minors must be kept in custody until their parents or legal guardians appear. Officials defend this policy on grounds that other parties who post bonds might abuse the children or might not care for them adequately.

INS has been accused of detaining minors less out of concern for child protection and more as a means of encouraging undocumented parents in the United States to make themselves known to the INS. While INS officials deny that they are holding the children "hostage," officials repeatedly expressed concern about releasing minors to persons other than parents when the parents are likely to be residing illegally in the country. The INS officials contend that lawyers and other people often posted bond for minors so that they could subsequently reunite them with their parents.

Finally, detention is used as a deterrence measure. Here the concern is less with the individual child and more with the precedent set by generous release policies. INS officials are

concerned that the automatic release of all apprehended minors would serve as an invitation to their increased immigration. They note that smugglers already make use of the problems experienced by INS in detaining/releasing minors by including youth in groups that are being brought across the border. According to INS officials, the smugglers hope that INS will release or even ignore the entire group rather than deal with the presence of minors. Advocates of early release point out that children should not be used as pawns by either side -- the smugglers or the INS. Moreover, they cite the complex set of motivations behind illegal migration, noting that many minors -- particularly those fleeing politically unstable situations -- are unlikely to be deterred by detention.

Procedures in Detention

As mentioned above, the majority of the apprehended minors who are in exclusion or deportation hearings are transferred from a holding center near the point of entry to a facility contracted by the INS. A minority are placed in widely dispersed regular juvenile detention centers. In either instance, the first concern is to notify parents or other relatives of their situation. The second, usually a direct outcome of the first, is to obtain legal assistance if at all possible.

The notification may be problematic, at least during the initial period after apprehension. INS officials throughout the west and southwest complain about the lack of facilities. For this reason, they contend, they may hold minors for longer than

is desirable in the holding centers or send minors to facilities quite far from the place where they were apprehended; often they send the various members of a single family to distant points. Nor does the Office of Detention and Deportation in the district where the apprehension occurred always have accurate information as to the whereabouts of persons detained a few miles away. As a result, confusion often occurs surrounding exactly where a minor is being held at any given time.

When INS places minors in detention centers, it attempts to separate them from unrelated adults. INS facilities follow the state regulations concerning the age of majority. For example, although a 17-year-old would be considered a minor in California, he or she would be held in an adult facility in Texas because the age of majority for juvenile criminal justice purposes is 17 in that state. (Although, for child welfare purposes, the age of majority in Texas is 18 as well.) Minors may remain with their mothers if they are female or very young males (approximately 10 years old or under). Adolescent male minors may be kept with their fathers, but they will be separated from their mothers and sisters.

In the case of females, the INS does not regularly enforce the separation of adults. There are very few facilities for unaccompanied adolescent girls, and most of the small number in this category have been held in the women and children sections of INS contract facilities. That adolescent girls may be held with unrelated adult women is one of the issues of contention in ongoing litigation.

While hardly anyone quarrels with the logic of separating adults and minors, separation is not necessarily in the best interest of the alien minors, particularly when the alternative is isolation. In some locations, separation from adults is achieved by placing detained juveniles in county juvenile facilities where the other inmates are young people who have been arrested for some kind of criminal activity. Because they have not committed a crime, the aliens are kept separately from the rest of the populations in most facilities. In the San Francisco area, for example, the very few minors who are held in detention for any length of time are placed in the Alameda County Juvenile Hall. There, they are held in solitary confinement cells so that they will be separated from the general population. It is not unusual for there to be only one alien juvenile in the solitary section, who therefore has no peer companionship whatsoever and is without the recreational and educational benefits that the other juveniles enjoy. Lawyers have reported that prison officials once bent INS regulations as a humanitarian action so that a 15-year-old boy could join the other youngsters in their regular activities; he had been held for 7 months in isolation at that point.

Types of Detention

Aliens may be apprehended and detained by the INS or by the U.S. Marshalls Service, whose jurisdiction is over persons involved in criminal acts. Crossing the border illegally is generally not punishable as a crime, but those who accept payment for taking

people into the country illegally are commiting criminal acts. As already described, the Marshalls Service not only detains these people, but also those aliens apprehended with them who may serve as material witnesses.

The INS and the Marshalls detain aliens in several different kinds of facilities. As the table on page 7 shows, 62% of all minors were held in contract facilities as of April 1986. Virtually no minors at that time were held in INS-operated facilities. Different types of INS facilities used by INS/Marshalls for long-term detention are described below:

-- **INS-owned and operated detention centers:** The INS operates several major facilities for alien detention, e.g. El Centro in California, Krome in Florida, El Paso in Texas, and the controversial Oakdale facility in Louisiana. These facilities are not intended to be used for the detention of minors, and usually contain only adult men.

-- **INS contract facilities:** These are facilities under INS jurisdiction, but operated by private parties under contract to the INS. They include both for-profit and not-for-profit operations. The for-profit contract facilities are operated by private custodial care agencies, while the not-for-profit facilities are generally managed by religious voluntary agencies. Contracts are awarded on the basis of competitive bidding. The INS (and Marshalls) have published service-wide criteria which all contractors must meet (the Standard Statement of Work for Contract Detention Facilities, 1984). Contractors must also agree to conform to all relevant state regulations. Otherwise existing facilities vary widely. As the service-wide Standard Statement does not specify how the contracting parties will handle minors, arrangements affecting minors are negotiated in each case.

-- **County run facilities, including juvenile detention centers that agree to hold aliens for the INS:** Normally, but not always, the aliens here are held separately from the general prison population; this separation may result in holding juveniles in solitary confinement. Although the INS does not operate county facilities or specify the conditions in them, INS officials are supposed to monitor conditions to assure that they meet Service requirements and standards.

-- **Non-facility detention:** Apprehended minors in Florida may be released to the Community Relations Service, and subsequently placed with relatives or in foster homes. The Catholic Charities organizations in Houston and San Diego place some aliens in foster care, as well. The INS may turn a child (or any alien it does not wish to detain) over to a private or public welfare agency. In these instances, the individuals are still formally in INS detention. They are out of detention only if they are released on their own recognizance or have posted a bond in the amount set by the Service.

The Service, not the contractors or the voluntary agencies, decides the facility in which it will place the alien, when and for what reasons it will transfer the alien to another facility, and all questions involving the alien's release, deportation, or asylum claim. Only immigration judges can overrule the decisions of INS officials relating to the terms of detention.

The INS awards its detention contracts on the basis of competitive bidding. It issues Service-wide Statements of Work on the basis of which it receives proposals. Assuming several applicants are able to meet the specifications and requirements in the Statement, an award will be given to the lowest priced bidder. The INS pays from about $20 to $85 a day per minor, depending on the facility. The most expensive alternative is to place children in county jails. The INS, for its part, assures payment at the agreed upon rate for a specified minimum number of detainees, and reimburses the contractors for each individual above that minimum. These arrangements have allowed quite different agencies to bid successfully for INS contracts.

Conditions in Detention/Descriptions of Detention Facilities

The following pages summarize observations and information derived from field visits to detention facilities in the West and

Southwest, as well as interviews with various officials at these facilities. Two of the facilities described below are for-profit operations run by private custodial care organizations; the remainder were operated by non-profit religiously affiliated agencies. The descriptions are accurate, as of the time of our site visits but changes may have been made in the described arrangements since the period of research. Even where changes have taken place, the conditions described are illustrative of those found generally in detention facilities.

Arizona

Tuscon

In Tuscon, Arizona the INS sends most of the women and young children it apprehends to the Salvation Army. The Salvation Army facility does not accept unaccompanied minors but, similarly to the other contract facilities, places women and children of both sexes under 12 in a separate section of the facility from adolescent males. Besides the detained aliens sent by the INS, there is a regular Salvation Army clientele of people in need of shelter for the night, and some being treated for alcoholism. Only the aliens remain there during the day, but at evening and morning meals, everyone eats in the same cafeteria: men, women, and children, both residents and overnight lodgers. The total capacity of the Salvation Army is 99, and space is provided on a first come first serve basis. This means that if the beds are all taken by the "regulars", the management will not accept people sent by the INS. The aliens are not permitted to leave the

Salvation Army facility. There is a small recreation area. Few on the staff are Spanish speaking and there is no educational program.

California

Hollywood

At the time of our research, Behavioral Systems Southwest, a for-profit custodial facility, operated a 160 bed facility which was recently required to move from Pasadena to Hollywood due to a change in zoning regulations. It is divided into two sections, one for women, young children of both sexes and adolescent girls and the other for boys between approximately 12 and 18. In this custodial care center as in Laredo Texas, regulations are strict and daily routines fairly regimented. While there are daily hours set for recreation, activities are limited to a small concrete area, to which access is denied when there are "infractions" of the rules, e.g. not having cleaned the bathrooms by the specified hour, or fighting. General conditions in the Behavioral Systems Southwest facility have been prominently cited by the lawyers engaged in litigation against the INS for its detention and release policies.

San Diego

Despite the very large number of minors apprehended at or near the border, there is only one facility to house minors in San Diego County. It is under the jurisdiction of the U.S. Marshalls, but shared by INS and operated by the Catholic Community Services, Diocese of San Diego. Casa San Juan is small; it

has a capacity of holding about 35 people, divided roughly evenly between male adolescents and women and young children of both sexes. The two groups are separated, and contact between them occurs only exceptionally. There is also a small foster care program for about 10 of the younger children and adolescent girls. A similar center in Calexico (under the jurisdiction of the INS) holding 35 people--and the only facility encountered with a section for adolescent girls--was closed in 1985.

The Casa San Juan describes itself as a "group home" rather than as a detention center, and is licensed as such by the state of California. Among the contract detention facilities, the facilities operated by the Catholic Charities were the only ones to have obtained state licenses for housing minors. However, in Casa San Juan, as the state license applies only to the unaccompanied minors, there were discrepancies in the treatment provided for the adolescent boys and for the adolescent girls who stayed with their mothers in the womens' section. Most importantly, the former had regular school classes taught by a county-paid teacher and teacher's aide; the latter had only the benefit of classes taught when possible by a volunteer nun. (Most of the unaccompanied adolescent girls are placed in foster care; but those whose mothers are in detention stay with them in the facility.)

Security at Casa San Juan appears less stringent than at other facilities visited (except Boys Town in Florida), and the managers were proud of the humane environment they had been able to create. The San Juan staff has sought to avoid imposing many

disagreeable security measures in two ways: first, it will not accept custody of minors who are believed to be "troublemakers," (the staff blamed previous escapes on the fact that the INS sent problem boys to the facility), and second, by severely limiting the outsiders who were allowed to visit the minors. Legal counsel may visit specific clients and one local legal representative was allowed to assist with bond arrangements and asylum applications for minors not otherwise represented.

In general, the INS Regional and District officials interviewed in California concurred on their preference for contract facilities operated by voluntary agencies rather than for-profit custodial organizations, even though the latter provide services at a cheaper rate. The officials believed that in the long run the voluntary agencies provided more services and, more important, had appropriate experience in handling minors. They also looked forward to a situation in which all the facilities detaining minors would be licensed by the state. In the short run, the INS hopes to negotiate another contract with Catholic Charities for a 40 bed facility near the border. If the contract materializes, the tentative plan is to place all of the unaccompanied minors in one of the facilities and the women and young children in the other.

Florida

In Florida, there had been two patterns of treatment for detained minors, one for Haitians and Cubans and the other for other nationalities--most of whom are from Central America

(especially Nicaragua) or the Caribbean. Recently, an agreement was negotiated between INS and the Community Relations Service that allows all minors to receive the same treatment.

Except for very young children, apprehended minors are held in the solitary confinement section of the adult facility at the Krome Detention Center for short periods, until alternative placements can be made. The INS notifies the Community Relations Service (CRS) of minors who are apprehended. CRS, like the INS, falls under the purview of the Justice Department; it has been charged with providing services to Cuban and Haitian minors since the passage of the Refugee Education Assistance Act, PL96-422, in the wake of the Mariel Boatlift.

If the minor is accompanied, CRS seeks the release of the family unit, and voluntary agencies (for example, USCC, Church World Service, CWS) will handle resettlement. Children whose parents or close relatives have legal status or are known to the CRS normally are released to these relatives. When unaccompanied minors are apprehended, CRS houses the boys temporarily in Miami's Boys Town, operated by the Catholic Charities, until a home placement can be found for them. Until recently girls were brought to the Red Shield facility run by the Salvation Army, but CRS found it to be lacking most of the advantages of Boys Town, and abandoned its use. Now girls, as well as unaccompanied children under 12 who are not placed with families, are brought to the Catholic Home for Children.

The average stay in Boys Town is 90 days, during which time formal classes are available in "English as a second language,"

basic math, and cultural orientation. Boys Town is considered one of the softest forms of detention in that there are few visible controls or guards. The staff at Boy's Town arranges field trips to "little Haiti" so that the detained boys may retain some contact with the Haitian community. Nevertheless, the minors there are still detained under INS jurisdiction and therefore are not permitted to attend public schools. They are sent to Krome to meet with their lawyers and to obtain medical treatment. Once the minors are released from this transition shelter, and are placed in longer term foster or other care, they attend school and live relatively normally. Voluntary agencies are involved in finding the foster care or other living arrangements, and monitoring the placements. Frequently, CRS places the children released in Florida into foster homes or facilities in states outside of Forida. With the CRS operation in effect, children seldom remain in detention beyond the time they spend in the process described above.

Problems can arise when Boys Town is full, however. The INS has kept minors in a separate building at Krome until spaces opened up. Also, the government transfered minors directly out of Krome to the Laredo contract facility in Texas. When space was lacking in the special barracks for children at Krome, reportedly minors were sometimes held in cells in the INS office itself. These practices do not occur any longer, according to the INS, in part, because the INS is apprehending fewer minors and, in part, because it is able to find appropriate persons to whom

the minors can be released.

Texas

El Paso

In El Paso, Texas a large detention facility (capacity 120) for women, young children, adolescent boys and adolscent girls was operated by an evangelical group, Christ is the Answer (CITA), until its closing in September 1986. It was immediately adjacent to the El Paso Service Processing Center, a major INS detention center holding some 400 adult men. The contrast between the two facilities was striking. The men in the Processing Center wear uniforms, color coded depending on their work details. They sleep in air conditioned dormitories which they are obliged to leave each morning at 7:30 AM and return to at dusk. They spend their days either working or standing under the few shade trees in the encampment. Each dormitory has one closed circuit television. The more than one hundred women and minors in the CITA facilities, conversely, wore their own clothes and could come and go within the compound as they chose. There was more than the usual amount of recreational space, although there is little equipment or organized sports. They slept in rooms housing several people, but far smaller units than in the mens' section. Women, young children of both sexes and adolescent girls were housed in one section and adolescent boys in the other.

The INS District Director in El Paso and the CITA personnel spoke of efforts to create a humane environment in the detention centers with regard to food, recreation and visiting privileges.

Families in the two detention facilities were allowed to visit on a weekly basis, and within the CITA facility, there was daily contact among family members in the women/girls section and the adolescent boys section. However, security at the CITA facility was tight. Everyone, including children, could be searched if they receive a visitor. As of mid-1985, the CITA managers planned to do away with these searches and to handle security by means of video cameras and plexiglass partitions that would prevent physical contact between visitors and detainees.

The CITA facility was one of the few that offered formal education for all the children and some of the adults. This program was put in place in 1985, largely as a result of pressure from and on behalf of the 24 Cubans in the facility. (These Cubans were sent to El Paso after having tried to enter the United States from Spain in late 1984 with false documents. They expected to be able to obtain refugee status at once; instead their cases are still in litigation.) The District Director declared the educational program to be "experimental", contending that although INS had no legal obligation to educate minors, he hoped it would keep them productively busy.

Laredo

The large INS detention facility (capacity 208) in Laredo, Texas, is run by the Corrections Corporation of America (CCA), a private custodial agency specializing in prisons and other forms of custodial care. It is a very modern facility, and when put into operation, it was seen as the most innovative as well, since it contains one dormitory for men, one for adolescent boys, and

one for women and young children. (Alien juveniles convicted of felonies are in a fourth dorm, which falls under the rules of the Bureau of Prisons (BOP).) CCA is a for-profit corporation which is licensed by the state of Texas as a security agency. However, it is not licensed by the state as a child care agency.

Dormitories in the Laredo facility are monitored by camera and audio equipment. Doors must be opened electronically before someone can pass from one corridor to another. The food seems adequate, videotapes are shown, and board games are provided, as well as soap-opera comic books. Whatever amenities are available, however, there is no mistaking the fact that these minors find themselves in a prison. Pat-down searches are conducted every time a detainee receives a visitor, including an attorney. Strip serches are conducted if the corrections personnel feel a detainee is concealing a weapon or a smuggled item. Minors can be put in an isolation booth for infractions such as fighting. They can be kept there for three days at a time.

Until early September 1986, joint recreation was permitted in the biggest exercise enclosure for men, juveniles, women, and children. That practice has been stopped. The men and adolescent boys now enjoy the big enclosure, whereas the women and young children are relegated to a smaller one. The women have been staying indoors because they do not see the point of outdoor recreation, now that they cannot talk to the men and are confined to a small space. As a result, children remain indoors

all day. Boredom is a principal attendant of detention.

INS detainees receive no education. By contrast, the juveniles detained for crimes do receive education, as required by the rules of the Bureau of Prisons. Because BOP rules require that juveniles be given a snack, everyone except the men gets a snack, whether BOP or INS detainees.

Because the El Paso facility had closed and Houston juvenile detention is very expensive, minors were being transferred to Laredo at the time of our site visit. This creates problems for the minors because their cases and related records remain in the locality where they were first apprehended. This makes it particularly difficult to press any defense against deportation.

In Laredo, Catholic Social Services runs a halfway house called La Frontera, which houses men, juveniles, women, and children. Those who arrive at La Frontera either have gotten there because they have heard of its existence, because they have been spotted by a priest at a detention center, or because they have been brought there by the Border Patrol. Usually those brought to La Frontera are minors or women with illnesses, especially those who are accompanied by children. La Frontera has a simple dormitory lay-out. Men and boys over nine are housed upstairs; women and children downstairs. Those who take shelter there are free to come and go as they please and to stay as long as they want to. Paralegal services are available. There is no formal agreement between Catholic Social Services and the Border Patrol; the arrangement is principally ad hoc.

Houston

In Houston, detention for minors in INS proceedings is arranged with the Harris County Juvenile Facility, an institution housing juvenile offenders having a maximum capacity for 110 persons. INS cases are accepted between the ages of 10 and 18 because they are considered to be federal detainees, while criminal and status offenders are accepted only to the age of 17, in accordance with Texas child welfare laws governing the age at which a person reaches his or her majority.

The Juvenile Facility is a modern, clean institution. Girls are housed on the second floor and boys on floors three through five, divided according to age, size, maturity, and nature of offense. There are three units on each floor. Until last year, when the facility received many more INS cases, INS detainees were housed in a separate unit of the facility. Now the facility holds a far lower number. Only two were residing there during our site visit. INS cases are now mixed with the other detainees and are assigned to units according to the same criteria as the other juveniles. Administrators are sensitive to the problems presented by language differences and try to place Spanish-speaking cases with other Spanish-speaking detainees. From the perspective of the administrators of the facility, language compatability was the only problem identified in connection with mixing INS cases with juvenile offenders.

Each unit is closely monitored. The central area is watched through cameras and the individual cubicles, each housing one detainee, are regularly listened to. The doors to each section

lock automatically and must be opened electronically from a central control booth. The Juvenile Facility is a prison, albeit a comfortable one. There are two gyms on the premises, which detainees attend twice a week. Criminal and status offenders receive instruction while in detention; INS cases do not.

The Undocumented Youth Program of the U.S. Catholic Conference works to obtain release for detainees at Harris County Juvenile, either by contacting the minors' parents if they are in the United States and available or by finding temporary foster homes for the minors. They provide legal counseling, get the minors into school, and ensure that they report to a deportation officer every month. Generally, the project has a good working relationship with the INS and Harris County Juvenile authorities. Recently the cost of keeping a minor at Harris County Juvenile Facility has increased to $96 a day. The cost at Laredo is only $36, and as a result many minors are being moved quickly to Laredo, sometimes before the Undocumented Youth Program has had a chance to intervene.

Sometimes INS detainees are taken to an emergency shelter run by Harris County Children's Protective Services called Chimney Rock Center. This facility is run for minors 10 and above, but they will provide overnight shelter for small children. Harris County Children's Protective Services will find temporary foster homes for younger children.

General Observations on Conditions in Detention

All the facilities examined seemed to meet respectable stan-

dards of hygiene, and offer nutritionally balanced diets. Food in most of the detention centers was standard American fare, or a mixed menu with some more typical food of the Central American region. Most complaints seemed to be about the adequacy rather than the quality or content of the diet.

All of the facilities either maintained some health personnel on the premises, or had some means of regularly transporting the ill to INS run or recommended clinics. Health care, however, was a subject of many complaints, either because it was perceived to be unresponsive or the personnel were considered unskilled.

A frequent complaint in nearly all the facilities concerned access to telephones. The general rule is that aliens may use the phones, which are sometimes pay stations that charge for local calls. Aliens then make "collect" long distance calls. In most cases there were limits as to the time one could spend on the phone and the time of day phones could be used. Phone calls rarely can be made in private.

Telephone use and access are important to detained aliens because phone communication is usually the only available means of seeking outside assistance. Minors use the phones not only to locate relatives or other contacts, but also to communicate with lawyers. Legal assistance is often difficult to come by in the first place, and if the lawyers live far away, they may make few if any personal visits. Moreover, a legal representative may not come to the facilities to offer services to whoever may need help. Rather, a specific minor must make arrangements with a particular attorney for assistance. And, as the Perez-Funez case

pointed out, available lists of legal services are often outdated and incorrect.

As for recreation, the standard practice was to send aliens, in groups, to small fenced-in concrete areas with, perhaps, a basketball hoop. There were few books in any of the facilities, and fewer still in Spanish--the dominant language of the detainees. All facilities had television sets.

Concerning abuses of detention, a recent class action suit (Jenny Lysette Flores v. Edwin Meese, filed in the Central District of California), still in the discovery stage at this point, alleges several abuses by the INS. These include housing minors with unrelated adults, subjecting minors to strip and body cavity searches, denying minors education and recreation, placing obstacles in the way of minors' obtaining legal assistance, and implementing release policies harmful to minors' interests.

In the INS district offices and at the facilities operated by humanitarian organizations, officials stated their sympathy for the people in their charge, and stated their intention to treat them humanely because they "were not criminals." Nevertheless, every contract facility--except Boys Town--takes measures to assure that detainees will not escape, and the inevitable consequence of these measures is the creation of a prison-like environment--no matter how sympathetic the staff. For the sake of security, windows and doors are locked and guarded, visiting is limited, and detainees searched--or visitors prohibited. In all of the facilities detainees are punished for rule infrac-

tions, in various ways, usually by stays of up to 72 hours in solitary confinement.

Only a small percentage of the minors remain in detention for over a month, and a majority leave within a few weeks. The lack of educational and recreational opportunities, and even the separation from family, are of major concern only for the minority who are incarcerated for longer periods. But the number of people detained for longer periods is increasing rather than decreasing, and strict release policies cannot help but to reinforce this tendency. The
contract facilities are relatively new enterprises for the INS; they were made necessary by the unprecedented arrival of hundreds of family groups, where previously the Service dealt primarily with unattached males. As almost any INS officer in the field will acknowledge, the Service is inexperienced and at times has acted inappropriately in dealing with family situations. The INS has adopted the policy of detaining women and minors in contract facilities run by other agencies primarily because of a recognition within the INS that proper care of minors is beyond its capacity.

Release From Detention

For minors who are accompanied by a member of their family, the question of release is usually straightforward. A minor in the company of a parent is likely to be released without question if the parent is released, although the amount of bond varies by thousands of dollars among the various districts. INS officials in most places release accompanied minors on lower bonds than

adults or may release them without bond. In Texas, bonds as high as $6,000 to $7,500 are initially set, sometimes for all the members of the family. These bonds are then lowered dramatically when the aliens concede deportability. In California, bonds are likely to be set between $2,000 to $2,500, but are then more difficult to lower. Even a relatively low bond of $1,500 for adults and nothing for the children, however, is frequently too high for the relatives of detainees to raise. Few bondsmen, in addition, will finance people lacking property or other collateral. Therefore, many families remain in detention with adults separated from each other and often from their children.

Minors who are unaccompanied but whose families are already in the United States usually have relatives who will obtain legal assistance and post bond for them. But, depending on the region, the INS may refuse to release minors to individuals other than members of the immediate family. INS policies and practices on this subject have been particularly controversial. In the early 1980s, INS officials in many districts released minors to any individual who posted bond, without verifying the relationships or intentions of such people. It was alleged that some of the people posting bond and posing as relatives, in fact, exploited the youth--as maids, for sexual purposes, etc.

Later, when the Western Region INS introduced strict regulations limiting the release of minors solely to the custody of parents or legal guardians, there were even more complaints. While the authorities claimed that they are correcting past

mistakes of release policies which were too loose, critics contended that the INS was using these regulations to hold children hostage in detention so that undocumented parents would come forward and the INS could initiate proceedings against them. Parents of children in detention, indeed, have refused to make themselves known to the INS in order to claim their children, fearing that they thereby would risk detention and deportation.

When the minors' parents are not in the United States or do not come forward, the only means of obtaining the young person's release is for another individual to establish that he or she is a legal guardian. Where this is possible, it takes a minimum of three months to obtain legal guardianships from the courts, even when close relatives petition for them. Temporary guardianships may be issued with little delay, but courts in California have been ruling against these in most cases. INS officials in the state complained that lawyers were obtaining temporary guardianships, securing the release of children, and turning the latter over to their undocumented parents, against INS regulations.

The strict release policies, undoubtedly, have had a desireable effect for INS, insofar as undocumented parents eventually come forward and claim their children. (In these cases, the parents and children are usually allowed to leave by posting a single bond in the amount initially set for the minor). However, the policy has had the undesirable effect for both INS and the youth of prolonging the periods of time that many minors spend in detention. This is not only a hardship for the minors, but has created a shortage of space for newly detained minors. Ironical-

ly, the latter now stand a better chance of being released on their own recognizance because the INS has no place for them. Moreover, staff in the contract facilities generally agree that the longer children are forced to remain in custody, the more difficult are the disciplinary problems and the more frequent are escape attempts.

While the Western Region has had a strict release policy, other regions have followed different practices. In fact, INS release policies vary greatly from region to region. In areas outside the Western region, INS tends to be more lenient in its release policies. Among officials with whom we spoke who were sympathetic to the principles guiding the policies of the Western region, they nonetheless interpreted them differently. In Florida, for example, the INS, as in the Western region, has attempted to keep minors in detention until their parents come forward. Florida officials, however, have allowed other near relatives to assume custody when parents do not come forward within a reasonably short time. Moreover, INS has developed an arrangement with CRS through which family reunification is possible, and alternative placements can take place. In this case, CRS undertakes a home study to ensure that placements are acceptable. Similarly, in Houston, INS has an arrangement with Catholic Charities to find acceptable foster care for detained minors.

CHAPTER THREE: POLITICAL ASYLUM AND LEGAL REPRESENTATION

As we have already noted, the minors who come from El Salvador, Guatemala or Nicaragua may well have left their countries of origin for political reasons and wish to apply for asylum. Minors in this situation have encountered three kinds of problems: first, difficulties in gaining access to the political asylum process (a major element in the Perez-Funez case); second, difficulties in obtaining an appropriate legal representative; and third, if they are young and unaccompanied, difficulty in adequately explaining the reasons for their "well-founded fear of persecution". These problems are exacerbated if the young applicants have the additional hardship of being held in detention during their hearings and appeals.

To gain access to the asylum system, minors like all other aliens, must specifically request it, or make statements that clearly indicate fear of returning to their countries of origin. An alien in United States under color of law, or not yet in INS custody, may go to the INS to request an asylum hearing. He or she will complete an asylum application and be scheduled for an interview with an examinations officer. The officer will submit the application to the Department of State's Bureau of Human Rights and Humanitarian Affairs for an advisory opinion on the merits of the case and, usually on the basis of this opinion, grant or refuse the asylum claim. Those refused may not appeal, but may again raise the political asylum request during deportation hearings.

Aliens who are already in INS custody--as are the minors of concern in this paper--present their asylum claims for the first time in the course of their deportation hearings. When this is done, the judge requests the advisory opinion from the Bureau of Human Rights and Humanitarian Affairs, referred to above. After receipt, another hearing taken place, at which the alien presents whatever evidence or witnesses he or she has to support the claims made. Aliens may be represented by legal counsel during the hearings, and it is usually the legal representative who prepares the evidence and locates the witnesses.

One of the major issues raised during the litigation in the Perez-Funez case was the vulnerability of unrepresented minors in proceedings. Lawyers for the plaintiffs complained that their clients, in effect, had been denied access to the asylum system and pressed, instead, to accept voluntary departure. Although contesting many of the allegations made in the Perez-Funez case, INS officials interviewed agreed that, once in asylum proceedings, minors do need representation in order to be able to present their cases adequately.

Although the numbers of Central Americans applying for political asylum, rather than accepting voluntary departure, have multiplied since 1980, the number of minors who apply individually for political asylum is undoubtedly small. (No data are kept on the age of applicants.) By and large, minors apply as part of a larger family group, and their own claims succeed or

fail according to the credibility attributed to their parents.

Nevertheless, the United States has seen the direct arrival of relatively large numbers of unaccompanied minors who enter as part of a first asylum influx -- for example, during the Mariel Cuban and Haitian boatlifts. The INS, as well as the various private agencies that assisted Cuban-Haitian entrants were generally not prepared to handle the presence of these unaccompanied minors. Procedures were not in place to identify unaccompanied minors who entered as part of the large movement of asylum-seekers. Nor had contingency plans been developed to arrange and finance foster placements. Our research has shown little progress in developing such contingency plans.

Nor has much consideration been given to the actual procedures in place to ensure that unaccompanied minors apply for and press their claim to asylum when that course of action is appropriate. While, as noted above, most minors apply for asylum as part of a family unit, during the course of our interviews, we identified several unaccompanied minors from El Salvador and Nicaragua who professed fear of return. Some had already applied for asylum and others were considering it. In some cases, the minors had telephoned parents who were still in Central America to discuss whether they should remain in the U.S. or return home despite their concerns about conditions in their country of origin. In other cases, the minors relied on the advice of other detainees or their legal representatives. Generally, in our interviews it did not appear that the minors themselves were well informed about asylum and what it constituted.

Apprehended minors are given lists of legal service agencies whom they may contact for pro-bono legal assistance. However, the lists observed included the names of many legal representatives qualified to give assistance in lowering bond requirements, but lacking experience with political asylum remedies. The existing religious and charitable agencies that for many years have offered legal services to aliens were trained for immigrant assistance to a predominantly Mexican population. Political asylum requests were rare until a short time ago, and there is a serious shortage of practitioners able or willing to pursue them for indigent clients, especially in the border areas. In connection with this project, we spoke with legal representatives who had assisted minors with their political asylum applications, but who knew very little about the origins of their clients, and believed the main purpose of the applications was to postpone deportation. The applications they completed for their clients usually contain little beyond the required biographical information. We even interviewed one lawyer who seemed sceptical that the country from which some of his clients came -- Nicaragua -- produced refugees.

The few pro bono legal assistance groups that do specialize in asylum work are swamped with hundreds of cases. The quality of legal work they offer is mixed, but virtually all of them are underfunded and understaffed. They rely on considerable inputs of volunteer legal labor because their clients are nearly all indigent. As a rule, most reject the notion of turning away

requests for help when there are no other sources of assistance. This means that even the most skilled lawyers among them rarely spend sufficient time to be able to fully document asylum cases. Indeed, even the most committed among these legal counsellors are likely to devote little time or effort to their clients' first asylum applications. They argue that no matter how superficial the initial application, it will serve to postpone an imminent deportation, and that once a hearing is actually scheduled, a more complete document can be produced. Lawyers report that much of their work is necessarily done by telephone, and sometimes they never meet their clients. Reliance on telephonic communication exacerbates the general difficulty in finding and retaining legal assistance.

Relatively few of the individuals who eventually take on the cases of minors or other detained aliens on or near the border are lawyers. Most are authorized legal representatives, whose practice is limited to certain immigration proceedings. Even these authorized legal representatives are in short supply. In San Diego--not a remote location--INS officials are concerned about the retirement of a local representative who used to handle most of the cases for detained minors. Other legal assistance groups in the city are already overburdened with pro bono clients, and, as of this writing, it appears that there are detained minors without legal representation. Minors (and other aliens) increasingly are being detained in remote locations rather than in cities where immigration lawyers are more plentiful. But even in cities like New York or Miami the number of

lawyers willing to work on a pro bono basis is totally inadequate to the need.

The several INS District Directors, Directors of Detention and Deportation and other officials interviewed in connection with this project varied--as one would expect--in their general views of what constituted proper treatment for the minors in their custody. On one fundamental issue, however, there was an apparent uniformity of opinion. None of the officials thought of these minors--or of the detained aliens generally--as political refugees, or showed any interest in determining which among them might have strong asylum claims. Their attitudes--generally shared by immigration judges, the personnel who operated the contract facilities, and sometimes by the legal representatives--was that aliens of all ages file for political asylum in order to gain time.

On many occasions, officials expressed their sympathy for the plight of the Central Americans. They perceived them as decent poor people who had endured much hardship in order to make the trek north, but their sympathy did not lead them to conclude that the decision to leave home had been made because of political persecution. Instead, they considered it their duty to deport those whom they had apprehended, making exceptions only for humanitarian reasons, e.g. for an orphan child, or for some one in need of medical or psychological attention.

Most INS officials, lawyers and immigration judges accept the premise, theoretically, that even young children may have a

well-founded fear of persecution, but there is much debate over the age at which a minor is able to express that fear adequately. Children, generally, find it more difficult than adults to explain their reasons for flight. The Refugee Act does not contain any special provisions that govern the processing of unaccompanied minors for admission to the United States; nor has the INS developed special criteria for judging minors' asylum claims. All applicants are required to demonstrate that they meet the definition of a refugee--i.e. that they have a well-founded fear of persecution on the basis of race, religion, membership in a social group, etc. The problem of determining whether or not minors meet the definition of a refugee has risen in the past, particularly in connection with unaccompanied minors from Southeast Asia. When criticisms reached the INS concerning their processing of Southeast Asian unaccompanied minors, cables were sent to the processing posts stating that minors might be unable to describe why they were refugees, hence should be given the benefit of the doubt during processing. No such instructions have been issued for asylum seekers. The need remains for clarification as to standards that should apply to people who may be too young to articulate properly their fears or to describe their experiences.

CHAPTER FOUR: CHILD WELFARE MANDATES

Willingly and unwillingly, child welfare institutions at the state and local level are becoming involved and taking a greater interest in the treatment of undocumented minors. The INS and child welfare agencies in the U.S. are under no legal obligation to coordinate services, but there is a growing area of overlapping jurisdictions and interests.

The Child Abuse Prevention and Treatment Act (P.L. 93-247, as amended), provides for grants to be made to states for the purpose of assisting them in developing, strengthening and carrying out child abuse and neglect prevention and treatment programs. It also specifies the conditions which states must meet to receive such grants. P.L. 93-247 is silent on whether such grants and the applicable conditions apply to both citizen and non-citizen children. State child abuse and neglect reporting laws related to the responsibility of the state to protect minors are also silent on the legal status of children with respect to citizenship.

Until the past several years, protective care and treatment to undocumented minors has not been a major area of concern to most state and local child welfare agencies. This has been so because the numbers of minors coming to the attention of the public agencies has been small and the demands for specialized services such as foster care or residential placements have been few. This situation has changed however, particularly in states

and localities in which there are sizeable undocumented communities. An increasing number of public child welfare agencies--primarily in the southwest and California-- are responding to reports of abuse and neglect allegations within these affected communities. Care and treatment costs to this population are on the rise, including investigation of abuse/neglect allegations. As well, there are attendent problems regarding provision of on-going services and treatment to those who are ineligible for programs such as Title XIX (Medicaid), AFDC, and Food Stamps because of lack of citizenship. State provision of these major supportive services to this population is not federally reimburseable.

The lack of clarity with respect to the provision of child protective and child welfare services to undocumented minors, and concerns over rising costs of service has resulted in uncertainty, confusion and a lack of uniformity in state and local public service agencies as to how to serve this group of affected children. Depending on the state or county offices, undocumented children who come into the jurisdiction of child welfare authorities may receive the full range of services at state or county expense, or the authorities may report juveniles to the INS, asking that the latter take custody. Near the border, child care agencies often attempt to locate relatives who will care for the children in the latters' country of origin. This rarely is feasible for minors from any country other than Mexico. Policies and practices differ not only from on

immigration district to another, but also among child welfare offices within the same district.

Depending on INS policies in a given district, child welfare agencies are also involved in the release of minors from detention. When INS holds that minors should be released only to parents and legal guardians, state and county officials are called upon to establish forms of temporary guardianships. Should INS modify its release policies and permit others to obtain the releases of minors, state and local child welfare offices may become more involved in the placement process. In Florida and Houston, child welfare personnel make decisions about placements following home studies. When CRS finds placements for minors outside of Florida, state authorities are contacted to ensure that the children are properly received.

State child welfare and youth authority agencies play a role in setting requirements for the safety and well-being of children held in out-of-home care facilities. The INS detains children in either contract facilities or county juvenile facilities. INS contracts require that these facilities be in conformity with state laws and regulations regarding juvenile detention and group homes for minors. Authority to regulate placements of children in certain 24-hour care facilities, such as group homes, foster homes, and some residential care facilities, is vested with the state public child welfare agency -- through the vehicle of licensure. Authority to regulate juvenile detention and other facilities designed to serve the states juvenile offender population falls within the purview of

state youth agencies.

To individuals or agencies outside the child welfare system, it is often difficult to ascertain which level of authority -- Federal or state-- has responsibility for establishing standards and monitoring conditions of minors in detention. In most states, for example, regulation of juvenile detention facilities falls within the realm of the youth agency and not child welfare. Regulation of child welfare group homes is the responsibility of child welfare authorities.

The American Correctional Association (ACA) has drawn up standards regarding juvenile detention but these are not binding. The Office of Juvenile Justice monitors conditions of detention, but has no jurisdiction over federal facilities, including those operated by the INS. Likewise, the Children's Bureau has disseminated State Licensing Models for the Placement and Care of Children, but these are not binding on states, much less on federal agencies. The National Center for Child Abuse and Neglect may withhold funding to states that do not provide adequate levels of child protection, but cannot oblige states to oversee the facilities of federal agencies. In commenting on its own monitoring system, INS officials acknowledged that the people sent out from Washington to observe the facilities are not likely to be familiar with each of the different state regulations.

Child welfare agencies have become involved, in a few situations, with the return migration of youth. In Houston, Mexican minors coming to the attention of Harris County

Children's Protective Services are often not turned over to INS or the Mexican consul, even when return to Mexico is indicated. The Children's Protective Services tries to find families in Mexico, and in cases where the family cannot travel to pick up the minor, a caseworker will accompany the minor to his home in Mexico.

A final area of concern to child welfare agencies and INS alike is what may be happening to the minors not placed in INS custody. When, as sometimes occurs, Border Patrol officers release the children they apprehend without serving them with Orders to Show Cause (OSC), they may be characterized as generous or, conversely, as irresponsible. In most of the border communities there are shelter facilities or halfway houses that service aliens, including children. Border patrol officers sometimes turn minors over to these shelters because they are reluctant to place them in detention, because the INS contract facilities that hold the minors are full, or because the district is short of funds for housing minors. Private shelters and halfway houses may provide the minors with services and support until the child is united with family in the United States or placed in some adequate care arrangement, or they may, essentially, let minors fend for themselves. Needless to say, the youth are reluctant to seek assistance from any public authority, no matter how difficult their situation may be.

There is a growing feeling among advocates on behalf of undocumented minors that federal, state and county child welfare

agencies should become more involved in INS activities related to minors, due to these and other issues. For their part, however, most state authorities are reluctant to do so, even if federal funding is made available. Legal questions about state responsiblities and the rights of undocumented minors, inside or outside of INS jurisdiction, remain unresolved, and state officials are fearful of the consequences of assuming a more prominent role with regard to children in this category. Moreover, the state child welfare authorities who do work with undocumented minors maintain that their first priority is to unite these minors with their families, whereas the INS mandate is to remove them from the country. In some cases, the INS defers and ceases its efforts to deport. When the undocumented minors also have undocumented parents, however, the INS and the welfare officials are more likely than not to differ in approach.

Private agencies that are involved in child welfare services -- particularly those connected with religious organizations -- face possibly conflicting mandates vis a vis INS when dealing with youth who come from Central America and other war torn areas. INS would like these agencies to operate facilities for minors in a humane way, but to assure the INS the migrant can easily deport when final orders for deportation are issued.
Many INS officials preceive the voluntary agencies as overly sympathetic to the aliens, and fear that agency personnel will attempt to protect aliens from deportation. In one community, near Harlingen Texas, community pressure led Catholic Charities to close down its contract facility with the INS. People in the

diocese expressed the view that an agency associated with the Catholic Church should not be facilitating deportation efforts of the INS while other Catholic groups participating in the Sanctuary movement were engaged in civil disobedience against the INS. In other communities public sentiments are similar, and the INS has been hard pressed to find voluntary agency collaboration on its terms.

The Catholic Charities agency in Houston is attempting to deal with its obligations to the minors and its commitments to INS in an innovative way. When a youth from Central America receives an order of deportation, and it is unlikely that he or she will find a way to remain in the United States, the agency seeks alternative placement of the minor outside of this country, Canada, for example. In this way, the minor would not be out of compliance with INS but would not have to return to his or her native land.

It remains to be seen how relations develop between INS and the various public and private agencies concerned with children. To date, there have been few attempts to bridge the gap between the two institutional mandates. The arrangement with the Community Relations Service in Florida and the agreement between INS and Catholic Charities in Houston are two exceptions to this general rule. Both are relatively new but are already showing signs of promise in finding alternatives to detention. As such, both bear further examination as models for other cooperative arrangements between immigration authorities and child welfare-oriented agencies.

CHAPTER FIVE: TOWARDS A NEW POLICY FRAMEWORK

Fundamental questions about the relationship between immigration policies and children's needs have been raised in this report. We have found, for the most part, that there are no national policies governing treatment of minors in immigration proceedings. Instead, policies and practices related to undocumented minors in immigration proceedings are inconsistent, *ad hoc* and vary substantially from region to region and, even, from district to district within the same region.

In some places, at some times, the absence of specific policies related to the detention and release of minors has translated into a flexible, common sense approach that has worked to the benefit of the apprehended children. Miami and Houston are two cases. At other times, however, the results have been less desirable: lengthy stays of detention in prison-like facilities; separation of children from their parents; absence of adequate legal representation; and unwillingness on the part of either immigration officials or child welfare officials to take responsibility for undocumented youth.

Among the issues deserving greater official attention and public scrutiny are:

- Whether or to what degree the special needs and interests of children should take precedence over what immigration authorities consider to be efficient mechanisms for locating and deporting illegal entrants?
- Under what circumstances, if any, should apprehended minors be detained for more than a few hours or days?

- What standards should apply in determining the adequacy of measures to detain, if necessary, or release minors?
- What should be the role of INS itself with regard to undocumented minors?
- What provision should be made for assuring greater recognition of potential asylum claims and for adequate counsel in support of such claims?
- What institutions and organizations outside of the INS could or should play a role in the making and implementing of policies relating to juveniles?
- What data should be kept on the situation of minors in immigration proceedings?

The following recommendations are aimed at stimulating the development of a more coherent policy framework.

General Principles

National policies regarding the treatment of undocumented minors in immigration proceedings should be promulgated and published. Recognizing the need for flexibility in addressing issues pertaining to children, these policies should place primary emphasis on child welfare considerations.

The absence of national policies on the treatment of minors apprehended by INS has led to inconsistent practices, with minors used, at times, to advance immigration enforcement needs without regard for the children themselves. Recognizing the legitimate interest of the INS in fulfilling its mandate to apprehend and deport undocumented minors, we nevertheless recommend that where there is a potential conflict between immigration considerations and principles of child welfare (for example, detaining minors to ease the process of deportation or to encourage undocumented parents

to come forward), the best interest of the child should be the determining factor in deciding what course of action to follow.

Release of Minors

Apprehended minors should be released from INS physical custody as soon as possible, with every effort made to prevent incarceration for even short periods.

Whether accompanied or unaccompanied, undocumented minors should not be subjected to detention for longer than is necessary to arrange their release or return to their countries of origin.

INS should establish agreements with child welfare service providers to arrange the release of unaccompanied minors -- that is, to make the determination that release of an unaccompanied minor to a relative, friend or foster home is not contrary to the minor's interest. Responsibility for the performance of these activities can be carried out by either a local public or private child placement agencies.

While INS has a legitimate interest in not releasing children to anyone who posts bail, the resulting policy -- that minors will only be released to parents or legal guardians -- is too restrictive. Instead, provisions should be developed to secure appropriate placements for currently detained minors, regardless of where their parents are now living. However, INS does not have the staff resources to conduct home visits or make determinations as to the adequacy of foster placements. The agreements developed with CRS in Miami and Catholic Charities in Houston might serve as models for the development of a child placement capacity. The agreements themselves can be negotiated at the national level, with umbrella groups that have local

presences in the major places in which minors are apprehended, or at the local level with public or private agencies.

The INS should also develop a service capacity to locate the parents of an apprehended youth and arrange for family reunification, where possible. The service capacity can be established by INS through contracts or other agreements with either public or private child welfare agencies. The agencies should present INS with a plan for identifying and locating parents, as well as ensuring that the minors will report to INS and attend all hearings.

Under no circumstances should minors be detained purely to require that undocumented parents come forward and present themselves to INS. Instead, INS should seek intermediaries who can arrange family reunification while seeking assurances that the minors will present themselves when needed for hearings and other purposes. Similar arrangements were used in the release of the "Spellman Haitians," and these should be examined as models.

To facilitate the voluntary departure of minors who live away from the U.S. border (i.e., the interior of Mexico, Jamaica, etc.) bilateral negotiations are needed to improve the processes by which permission is given to return minors.

Although the relations with the Mexican consuls at the border sites appeared to be functioning smoothly, there were reports of difficulty obtaining travel documents for minors coming from the interior of Mexico, as well as other countries. While other countries are verifying the nationality of minors and finding parents, the minors are sometimes remaining in detention facilities in the United States. Where voluntary departure is requested, the process

of family reunification should be simplified. Bilateral discussions would be useful in accomplishing speedier family reunification, with both governmental and private child welfare agencies involved in the process.

Detention of Minors

Recognizing that there are circumstances under which detention may be necessary for a period of time, we recommend the development of alternatives to use of secure detention facilities, such as licensed group homes.

Secure detentention may be needed if there is evidence that the minor has committed a serious crime unrelated to his or her illegal entry or has failed to present himself to INS when requested. In all other cases, however, INS should seek the least restrictive environment in which to place minors. The use of Boystown in Florida and foster homes in Houston demonstrates the potential for placing undocumented minors in facilities that are not modeled after juvenile justice ones.

Facilities that are used by INS to detain apprehended minors should be required to meet the licensing provisions of state child welfare and/or youth service agencies.

Several facilities that we visited, mostly not-for-profit ones, were licensed by the state under child welfare regulations. The for-profit facilities, on the other hand, were generally not licensed nor did they have knowledge of licensing requirements. Attention to the special needs of minors was more evident in the places which adhered to child welfare policies. Some agencies expressed unwillingness to operate group homes for undocumented minors if they were

required to obtain licenses, however. They cited the complexities of the licensing requirements rather than they actual provisions as reasons not to require that facilities be licensed. Nevertheless, a requirement that facilities be licensed by the state child welfare authorities would ensure compliance with state regulations related to child welfare.

Legal Representation of Minors

There should be more proactive steps taken to ensure that minors receive adequate legal counsel, particularly if there is a likelihood that the minor will apply for asylum.

This recommendation is aimed at INS, not-for-profit legal groups and UNHCR, all of which can assist minors in obtaining adequate legal counsel. The INS should keep current lists of legal counsel to provide to apprehended minors. Not-for-profit legal groups should consider the development of a legal defense fund earmarked for representation of minors. UNHCR (directly or through its Legal Counseling Project) should be informed by INS of the apprehension of minors who come from countries from which adult asylum seekers emigrate. Following notification, UNHCR should contact the youth to ascertain if they have received legal counsel and if they plan to apply for asylum. If the minor applies for asylum, UNHCR should monitor the case.

Monitoring and Oversight

INS should designate staff to have responsibility for coordinating the development and implementation of policies related to minors.

There are several sections of INS whose activities relate to youth (Border Patrol; Investigations; Detention and Deportation; Refugee, Asylum and Parole; General Counsel and others). There is need for coordination within INS on children's related issues. Moreover, there is need for INS to communicate regularly with individuals and agencies that are concerned with the welfare of children. Designation of special staff responsibilities for minors would facilitate both the intra-INS and out of INS communication. In addition, this staff should have responsibility for developing standards for the detention and release of minors, and they should be responsible for the monitoring of facilities housing minors in INS custody. Because of the varied places within INS that relate to children, the designated staff should report directly to the Commissioner, Deputy Commissioner or Executive Associate Commissioner.

There is need within the private sector for an organization to serve as an ombudsman, monitoring the circumstances of minors in INS custody.

Although INS can itself improve its monitoring role vis a vis minors in its custody, it is likely to continue to experience conflict between its immigration enforcement mandate and its responsibility for minors. A private, "watchdog" agency is needed to monitor regularly the circumstances of undocumented minors and make recommendations for needed improvements. An agency with an existing child welfare expertise is needed in this role.

UNHCR should actively monitor the situation of minors from

Select countries (for example, when there are more than x number of asylum claims pending from nationals of that country) in order to ensure that their rights are protected.

As discussed above, UNHCR can play an active monitoring role with regard to this population.

Collection of Data

INS should regularly collect and make available data on the age and sex of apprehended and detained minors; asylum requests; and disposition of cases.

It is now difficult to determine the scope of problems related to undocumented minors in immigration proceedings because of the poor quality of data. Improved data collection would allow for the monitoring and oversight described above.

Appendix I

Sites Visited

Arizona

Phoenix

Central American Refugee Project

Tucson

Children's Protective Services
Salvation Army

California

Los Angeles

National Center for Immigrants Rights
International Justice Fund for Immigrants and Refugee Assistance
Orange County Social Services
Child Welfare Services
Catholic Services

Pasadena

Behavioral Systems Southwest Facility
El Rescate

San Diego

INS District Office
U.S. Border Patrol
INS Detention Facility
Casa de San Juan (Catholic Community Services)- Licensed

San Francisco

Father Moriarty Central American Refugees Program

San Isidro

Border Patrol Holding Facility

District of Columbia

Office of Bilingual Education, D.C. Public Schools
Central American Refugee Center
District of Columbia Unaccompanied Minors Program, Child and Family Social Services
INS Office of the General Counsel
U.S. Marshall Service
U.S. Immigration Judges - Office of the Chief Immigration Judge

Florida

Miami

Dept. of Human Services
Community Relations Service
Boys' Town Facility
Catholic Charities
INS District Office/Krome Facility

Nevada

Las Vegas

Catholic Community Services of Nevada Facility

Texas

El Paso

Ins District Office
Christ is the Answer (CITA) Facility
Annunciation House (Private Shelter)
INS Detention Facility

Laredo

Juvenile County Jail
Harris County Juvenile Facility
Catholic Services Minors Program (Licensed Foster Care)

Appendix Two

1. Execute complete Form I-213 (Record of Deportable Alien)

2. Question in detail concerning the following, add to the narrative of the I-213
   A. Location of immediate family;
   B. Location of any friends or relatives in the United States or contiguous territory;
   C. Type of locale in country where subject was raised;
   D. With whom subject resided prior to departure from home;
   E. Length of time in transit from home to United States;
   F. Route of travel (e.g.. Length of time spent and status in each, date of arrival at border, etc.);
   G. Destination in the United States;
   H. Whom subject was to contact in the United States;
   I. Present funds and anticipated method of support;
   J. If smuggled, what arrangements were made;
   K. The health of the subject; does he admit to any health problems?
   L. Subject's language skills

3. Execute complete I-217 (Information for Travel Document or passport)

4. Explain voluntary departure and subject's rights to hearing;

5. Grant voluntary departure, if appropriate; otherwise process for issuance of order to show cause.

For unaccompanied minors under 14 years, there were further instructions:

1. Execute same steps as above with exception of numbers 4 and 5; however, if juvenile has to be placed in detention or released on bond, an OSC/WA will be issued.

2. Contact appropriate foreign consulate or embassy for assistance.

3. If necessary, contact American Embassy in subject's country for assistance in verifying facts and arranging reunion with subject's relatives or friends.

4. Explain voluntary departure to subject's representative and his right to a deportation hearing.

5. If appropriate, grant voluntary departure and cancel any OSC/W